

ever, that there was a long-established historical precedent in the Senate for postponing business until after the state of the Union message to the Congress by the President. The Majority Leader of the Senate, Michael J. Mansfield, of Montana, then arose and stated his intention to shortly move for adjournment, for the following reasons:

I have had some conversations with various Senators relative to their desire to have a petition read to the Senate today.

I appreciate the courtesy which they showed in telling me of what they intended to do.

I explained to them, or at least I tried to, that, I had been asked by many other Senators whether there was to be any business today, and I had told them all that under custom and procedures, there would be no business, there would be no morning hours, and there would be no introduction of bills because that was the custom, based on practice and precedent. It was a custom which gave to the President of the United States a courtesy, and it was a custom which was predicated on the idea that no business of any sort should be transacted until after the delivery of the President's state of the Union message.

It is my understanding that only on one occasion was this practice abrogated and that was when Congress received notice that the President of the United States would not be in the position to deliver his state of the Union message until 2 weeks after Congress convened.

The Senate then adjourned, without transacting any business, until the following day.

§ 11.5 Contrary to the usual custom in the Senate of deferring all business at the opening of a session until after the President's message on the state of the Union, the Senate agreed to begin business on the second day of the session, before the President's message.

On Jan. 18, 1972,⁽¹⁶⁾ the Senate agreed by unanimous consent to take up unfinished business from the first session on Jan. 19, the following day. The President informed the Senate that he would deliver the state of the Union message to the Congress on Jan. 20, 1972.

§ 12. Action on Bills and Resolutions During Organization

As a general principle, resolutions may be offered and acted upon in both Houses of Congress during the entire period of organization, from the first call to order to the President's message on the state of the Union. In addition, a

¹⁶ 118 CONG. REC. 4, 92d Cong. 2d Sess.

major bill may on a rare occasion be considered and passed in both Houses before organization is completed by the adoption of rules,⁽¹⁷⁾ although a bill will not be considered in the House before the administration of the oath to Members-elect.⁽¹⁸⁾ Major bills are not usually considered by the House as a body before rules have been adopted and before the President has delivered his message to Congress.⁽¹⁹⁾ In prevailing practice, numerous “opening day bills” are introduced by House Members at the beginning of a new Congress, although they may not actually be referred to committee until a later time.⁽²⁰⁾ However, in the Senate the introduction of bills at the opening of a new Congress, or even at the

opening of a new session, is not generally permitted until after the Presidential message.⁽¹⁾

In order to complete organizational business, it is of course necessary to offer various House resolutions before the adoption of rules; many of those resolutions, which are customarily drafted to complete organizational business, are discussed in the preceding sections of this chapter, and will not be discussed here.⁽²⁾ This section will deal with the general principles that govern the consideration and passage of bills and resolutions offered before the adoption of rules.

Primarily, any resolution affecting the organization of the House is privileged and takes precedence over other matters before the adoption of standing rules.⁽³⁾ Under general parliamentary law, one hour of debate is in order on a resolution, the time to be con-

17. See § 12.8, *infra*.

18. 2 USC § 25 requires that the oath be administered to the Speaker, to Members, and to the Clerk before the House enters into general business. If the right of individual Members to be sworn is challenged, however, the House may proceed to business before resolving the challenges (see Ch. 2, *infra*). On occasion, the House has transacted business, including the adoption of rules, before the election of a Clerk (see 1 Hinds' Precedents §§ 93, 198–203, 240, 242, 244, 245).

19. See § 11, *supra*, for the time of taking up of legislative business.

20. See, *e.g.*, §§ 12.1, 12.2, *infra*.

1. See § 12.10, *infra* (first session); § 11.4, *supra* (subsequent session).

2. Examples of such standardized resolutions, whose adoption by the House is usually perfunctory, are the resolution to proceed to the election of a Speaker (see § 6, *supra*), the resolution to elect officers of the House (see § 7, *supra*), and the resolutions to notify the Senate and the President of the assembly of the House (see § 7, *supra*).

3. See 6 Cannon's Precedents § 3.

trolled by the proponent thereof;⁽⁴⁾ a resolution offered before rules are adopted may be withdrawn at any time before action is taken thereon, without obtaining the consent of the House.⁽⁵⁾ A pending resolution is not subject to amendment unless the Member in control yields for that purpose,⁽⁶⁾ or unless the previous question is moved and rejected.⁽⁷⁾ Any amendment offered to a resolution during organization is subject to the requirement that it must be germane.⁽⁸⁾ For example, when an amendment proposing punishment was offered to a resolution authorizing the Speaker to administer the oath of office to a Member-elect, the amendment was ruled not germane, prior to the adoption of standing rules.⁽⁹⁾

When bills and resolutions are offered on the floor before the House is organized, they cannot

4. See 5 Hinds' Precedents §6759; §12.3, *infra*.
5. See §12.4, *infra*.
6. See §12.5, *infra*.
7. See §12.6, *infra*. For the treatment of the motion to amend and the motion for the previous question, prior to the adoption of rules, see §§8, 9, *supra*.
8. See 5 Hinds' Precedents §6760; §12.6, *infra* (resolution open to germane amendment when previous question rejected).
9. See §12.7, *infra*.

be offered by committee, as committees have not yet been formally constituted. Most of the organizational resolutions are offered by ranking party leaders.⁽¹⁰⁾ The House does, however, maintain informal committee jurisdiction over some of the opening functions which require resolutions, such as the adoption of rules and the fixing of the hour of daily meeting.⁽¹¹⁾ (A bill or resolution on the floor during organization may be recommitted to a special committee to be appointed by the Speaker.)⁽¹²⁾

10. See, *e.g.*, opening day of the 92d Congress, 117 CONG. REC. 13-16, Jan. 21, 1971. Olin E. Teague, Chairman, Democratic Caucus, offered the resolution to elect officers; Wilbur Mills, former Chairman, Committee on Ways and Means of the 92d Congress, offered the resolution to notify the Senate of the organization of the House; Hale Boggs, Majority Leader, offered resolutions to notify the President of the assembly of Congress and to set a joint session for the Presidential message; George Mahon, former Chairman, Committee on Appropriations of the 92d Congress, offered a resolution to notify the President of the election of the Speaker and of the Clerk.
11. The resolution to adopt rules and the resolution to fix the hour of daily meeting were offered at the beginning of the 92d Congress by William Colmer, former Chairman of the Committee on Rules of the 92d Congress. 117 CONG. REC. 14, 15, Jan. 21, 1971.
12. For the motion to recommit and its effect before adoption of rules, see §9, *supra*.

As to consideration of bills and resolutions before the adoption of rules, the House proceeds not only under general parliamentary law but also under the precedents and the rules of prior Congresses. When the House considered an emergency bill at the beginning of the 73d Congress, the provision was considered, by unanimous consent, as if under a rule of the previous Congress restricting debate and amendments.⁽¹³⁾ But a statute requiring that proposed resolutions and reports be made available to Members within a certain time before their consideration on the floor has no effect prior to the adoption of the rules. Such a statute has been determined an exercise of the rule making power of the preceding Congress and therefore not binding on the House before the adoption of current rules.⁽¹⁴⁾

13. See § 12.8, *infra*.

14. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971, cited at § 12.9, *infra*. The statutory provisions referred to above were part of the Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140 [§§ 108(b)(4) and 107(b)]. The ruling of the Chair (Speaker Carl Albert) was based in part on the language of the statute itself, at § 101, characterizing its own provisions "as an exercise of the rule-making power of the House, subject to and with full recognition of the power of the House to

As stated above, the Senate postpones action on bills at the beginning of a second or third session until after the Presidential message. The Senate has also refrained from legislative business during those protracted periods when the House was unable to elect a Speaker.⁽¹⁵⁾ Although there is no occasion where the House has resumed business before the organization of the Senate at the beginning of a new Congress, the House has proceeded with general legislative business at the beginning of a second session before a quorum had appeared in the Senate.⁽¹⁶⁾

Introduction of "Opening Day Bills"

§ 12.1 Where a large number of bills are introduced on the opening day of the Congress, the Speaker may announce that those bills that cannot be referred on that day may be included in the next day's Record and printed with the date of the opening day.

enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

15. See 1 Hinds' Precedents §§ 122-25.

16. See 1 Hinds' Precedents § 126.

On Jan. 3, 1957,⁽¹⁷⁾ Speaker Sam Rayburn, of Texas, made the following announcement:

As Members are aware, they have the privilege today of introducing bills. Heretofore on the opening day of a new Congress several thousand bills have been introduced. It will be readily apparent to all Members that it may be a physical impossibility for the Speaker to examine each bill for reference today. The Chair will do his best to refer as many bills as possible, but he will ask the indulgence of Members if he is unable to refer all the bills that may be introduced. Those bills which are not referred and do not appear in the Record as of today will be included in the next day's Record and printed with a date as of today.

§ 12.2 The Speaker stated that prior to the adoption of rules, bills could not be introduced and immediately referred to committee, in the absence of procedure to govern them.

On Jan. 21, 1971,⁽¹⁸⁾ Speaker Carl Albert, of Oklahoma, made a statement concerning the introduction and reference of bills during the organization of the House. He alluded to the practice of Members of introducing several thousand bills on the opening day

17. 103 CONG. REC. 50, 85th Cong. 1st Sess.

18. 117 CONG. REC. 16, 93d Cong. 1st Sess.

of Congress and to the announcements of past Speakers in relation to the impossibility of referring them all to committee on opening day. He then stated:

Since the rules of the 93d Congress have not yet been adopted, the right of Members to introduce bills, and the authority of the Speaker to refer them, is technically delayed. The Chair will state that bills dropped in the hopper will be held until the adoption of the rules, at which time they will be referred as expeditiously as possible to the appropriate committee. At that time, the bills which are not referred and do not appear in the Record as of that day will be included in the next day's Record and printed with a date as of the time the rules were adopted.

Action on Resolutions Prior to Adoption of Rules

§ 12.3 A resolution offered in the House prior to the adoption of the standing rules is debatable under the hour rule.

On Jan. 3, 1969,⁽¹⁹⁾ Speaker John W. McCormack, of Massachusetts, ruled, prior to the adoption of rules, that one hour of debate would be in order on a pending resolution, the time to be controlled by the proponent thereof.

§ 12.4 Prior to the adoption of the rules, a resolution may

19. 115 CONG. REC. 15, 91st Cong. 1st Sess.

be withdrawn at any time before action is taken thereon.

On Jan. 21, 1971,⁽²⁰⁾ after immediate consideration was asked by Mr. William M. Colmer, of Mississippi, on a resolution, he stated that the wrong resolution had been submitted and requested unanimous consent to withdraw the resolution. Speaker Carl Albert, of Oklahoma, ruled, over objection, that Mr. Colmer had the right to withdraw the resolution without obtaining unanimous consent.

§ 12.5 Prior to the adoption of the rules, a pending resolution is not subject to amendment unless the Member in control yields for that purpose, or unless the previous question is rejected.

On Jan. 4, 1965,⁽¹⁾ Mr. James C. Cleveland, of New Hampshire, stated a parliamentary inquiry:

MR. CLEVELAND: If the resolution is adopted, will it be impossible for me to offer my own resolution pertaining to the same subject matter, either as an amendment or a substitute?

THE SPEAKER:⁽²⁾ If the resolution is agreed to, it will not be in order for the gentleman to offer a substitute resolu-

tion or an amendment, particularly if the previous question is ordered.

MR. CLEVELAND: Is it now in order, Mr. Speaker?

THE SPEAKER: Not unless the gentleman from Oklahoma yields to the gentleman for that purpose.⁽³⁾

Germaneness of Amendments Prior to Rules Adoption

§ 12.6 Ruling by the Speaker that prior to the adoption of the rules, a pending resolution on which the motion for the previous question is rejected is open to any germane amendment.

On Jan. 10, 1967,⁽⁴⁾ Speaker John W. McCormack, of Massachusetts, held that prior to the adoption of rules any germane amendment would be in order on a resolution for which the previous question was voted down.

§ 12.7 The Speaker held not germane, prior to the adoption of rules, an amendment adding punishment to a resolution providing that the Speaker administer the oath of office to a Member-elect.

On Jan. 3, 1969,⁽⁵⁾ following a point of order, Speaker John W.

20. 117 CONG. REC. 13, 92d Cong. 1st Sess.

1. 111 CONG. REC. 20, 89th Cong. 1st Sess.

2. John W. McCormack (Mass.).

3. The pending resolution was offered by Mr. Carl Albert (Okla.).

4. 113 CONG. REC. 31, 90th Cong. 1st Sess.

5. 115 CONG. REC. 25, 91st Cong. 1st Sess.

McCormack, of Massachusetts, held as follows on the germaneness of an amendment, prior to the adoption of the rules:

The Chair will state . . . that while we are operating under general parliamentary law . . . volume VIII, section 3384 of Cannon's Precedents states: "While the House is governed by general parliamentary usage prior to the adoption of rules, the Speakers have been inclined to give weight to the precedents of the House in the interpretation of that usage."

The Chair anticipated that the question of germaneness would be raised and has had the precedents of the House thoroughly researched.

The Chair might state there was no comparable case that the Chair can ascertain as a result of research in the annals of the House. However, it appears to the Chair that the punishment of Mr. Powell⁽⁶⁾ for acts committed in the 88th or 89th Congresses, or declaring his seat vacant in the 91st Congress, is not germane to the proposition that he be now sworn in.

The Chair sustains the point of order.

Consideration of Measures Before Adoption of Rules

§ 12.8 When the House considers a major bill before the adoption of rules, the legislation is considered under general parliamentary law, embracing not only the forms

6. Mr. Adam C. Powell (N.Y.).

and precedents recognized over a period of years but also the rules of prior Congresses, including past rules restricting debate and amendments.

On Mar. 9, 1933,⁽⁷⁾ the opening day of the 73d Congress, the House considered a bank bill transmitted by President Franklin D. Roosevelt to the Majority Leader. Passage was moved on the bill before printed copies were available for Members, and the bill was considered under a unanimous-consent procedure restricting debate and amendments:

MR. BYRNS:⁽⁸⁾ Mr. Speaker, I ask unanimous consent for the immediate consideration of H.R. 1491, and in its consideration that there shall be 40 minutes of debate, one half of such time to be controlled by the gentleman from Alabama [Mr. Steagall] and the other half by the gentleman from Pennsylvania [Mr. McFadden]; that at the conclusion of the debate the previous question shall be considered as ordered on the bill to final passage.

Before the request had been agreed to, Mr. William B. Bankhead, of Alabama, stated a parliamentary inquiry:

As far as I am advised, the House has not yet adopted rules of procedure for this Congress. As I understand it,

7. 77 CONG. REC. 83, 73d Cong. 1st Sess.

8. Mr. Joseph W. Byrns (Tenn.).

unless objection is raised, the ordinary proceedings governing the House during the 72d Congress would prevail in the consideration of this unanimous consent request?

THE SPEAKER:⁽⁹⁾ The gentleman is correct. . . .

MR. O'CONNOR:⁽¹⁰⁾ Just to clear up the parliamentary situation, as I understand the request of the gentleman from Tennessee, it involves the consideration of this bill in the House as though the rules of the 72d Congress had been adopted, and, as it were, under suspension of the rules; and the bill will not be subject to amendment. Is this correct?

MR. BYRNS: The bill will not be subject to amendment.

§ 12.9 Prior to the adoption of rules, the House operates under general parliamentary law, and statutory enactments incorporated into rules of prior Congresses as an exercise of the rule-making power do not control proceedings of the next House until it adopts rules incorporating those provisions. Accordingly, prior to the adoption of rules, the requirement of the Legislative Reorganization Act of 1970 that proposed resolutions must be available to Members for three calendar days prior to consideration⁽¹¹⁾ is not in effect.

9. Henry T. Rainey (Ill.).

10. Mr. John J. O'Connor (N.Y.).

On Jan. 22, 1971,⁽¹²⁾ Mr. Durwood G. Hall, of Missouri, made a point of order against a proposed resolution on the ground that consideration thereof would be "against the law of the land", in that the requirements of the Legislative Reorganization Act of 1970, §§ 108(b) (4) and 107(b), as to the time of availability of printed reports and resolutions to Members, had not been complied with. Speaker Carl Albert, of Oklahoma, ruled as follows:

The Chair would point out to the gentleman from Missouri [Mr. Hall] that at the present time, as the gentleman from Missouri [Mr. Richard W. Bolling] has just stated, the House is operating under the general parliamentary law. No rules have yet been adopted. The provisions of the Legislative Reorganization Act, while enacted into law in the 91st Congress, cannot restrict the authority of this present House, in this 92d Congress, to adopt its own rules.

The Constitution is, of course, superior to any public statute and the Constitution in article I, section 5, gives each House the authority to determine the rules of its proceedings, and it has been repeatedly held that the power of each new House to make its own rules may not be impaired or controlled by the rules or actions of a preceding House.

11. Pub. L. No. 91-510, §§ 108(b)(4) and 107(b), 84 Stat. 1140.

12. 117 CONG. REC. 132, 92d Cong. 1st Sess.

These principles are, in fact, recognized and enunciated in Public Law 91-510, the Legislative Reorganization Act. Section 101 of that act states in part that the rules changes recommended therein are enacted "as an exercise of the rule-making power of the House, subject to and with full recognition of the power of the House to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

The Chair overrules the point of order.

Senate Practice as to Introduction of Bills During Organization

§ 12.10 At the beginning of a Congress the Senate does not customarily permit the intro-

duction of bills until after the President has delivered his message on the state of the Union.

On Jan. 5, 1955,⁽¹³⁾ the opening day of the 84th Congress, Senator Lyndon B. Johnson, of Texas, made an announcement to the Senate:

As is customary, the Senate will transact no further business in the way of the introduction of bills or other matters until after the President has delivered his message on the state of the Union.⁽¹⁴⁾

13. 101 CONG. REC. 7, 84th Cong. 1st Sess.

14. For an explanation of the custom and its rationale, see § 11.4, *supra*.